

**IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN
AND FOR SAINT LUCIE COUNTY, FLORIDA**

CASE NO: 2016CA001406

**GERALD R. PUMPHREY, a Personal
Representative of ESTATE OF TRYSTEN
ELI FRANK ADAMS,**

Plaintiff,

vs.

**FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, THE DEVEREUX FOUNDATION,
INC., and DEVEREUX COMMUNITY BASED CARE,
INC.**

Defendants.

**DCF'S MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT**

COMES NOW, the State of Florida Department of Children and Families (hereinafter "DCF"), by and through its undersigned Counsel, and hereby files this, its Motion to Dismiss Plaintiff, GERALD R. PUMPREY's, a Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS (hereafter "PLAINTIFF"), Second Amended Complaint with prejudice and in support thereof states as follows:

1. The litigation in this case began on or about August 1, 2016, when PLAINTIFF filed a nine Count wrongful death Complaint against DCF, THE DEVEREUX FOUNDATION, INC., and DEVEREUX COMMUNITY BASED CARE, INC.

2. On or about September 15, 2016, PLAINTIFF filed a Second Amended Complaint for negligent placement, negligent supervision, and negligent training. Counts

I through III are asserted against DCF. (See Second Amended Complaint, attached hereto as Exhibit "A").

3. PLAINTIFF's Second Amended Complaint stems from allegations that while in the legal custody of Defendants, minor, TRYSTEN ELI FRANK ADAMS (hereinafter "ADAMS") was allegedly murdered by Foster Parents Michael and Michelle Beer (hereinafter collectively referred to as "BEERS"). (See Exhibit A, ¶ 10).

4. On or about July 29, 2014, ADAMS was placed in the care and custody of the BEERS. (See Exhibit A, ¶ 13).

5. Shortly thereafter, on or about September 28, 2014, the BEERS allegedly murdered ADAMS. (See Exhibit A, ¶ 10).

6. Count I of the Second Amended Complaint alleges that DCF owed a duty of reasonable care in providing a safe environment to ADAMS and DCF breached this duty by **placing** ADAMS in the care of the BEERS. (See Exhibit A, ¶¶ 14 - 15).

7. Count II of the Second Amended Complaint alleges that DCF owed a duty to ADAMS in supervising the BEERS and her **placement** with the BEERS. (See Exhibit A, ¶ 22 - 23). PLAINTIFF further claims that DCF breached this duty by **allowing continued placement** of ADAMS in the care of the BEERS, which resulted in his death. (See Exhibit A, ¶ 24).

8. Count III of the Second Amended Complaint alleges that DCF owed a duty of reasonable care in training of the BEERS as Foster Parents. (See Exhibit A, ¶ 31). PLAINTIFF further claims that DCF breached this duty by failing to adequately train the BEERS as Foster Parents which resulted in the BEERS beating ADAMS to death. (See Exhibit A, ¶ 32).

9. PLAINTIFF also alleges that DCF knew and/or should have known that **placement** with the BEERS created a foreseeable likelihood of harm to ADAMS and other similarly situated children, but DCF failed to take reasonably steps to guard against such risk. (See Exhibit A, ¶¶ 16, 25, and 33).

10. Dismissal of Counts I and II of the Second Amended Complaint with prejudice against DCF is appropriate because all of PLAINTIFF's claims against DCF are based on DCF's alleged placement of ADAMS into the BEERS' home. Placement activities of Foster Children are protected by Sovereign Immunity under the provisions of Florida Statutes § 768.28 and therefore the Second Amended Complaint should be dismissed with prejudice as to DCF. See Department of Health and Rehabilitative Services v. B.J.M., 656 So. 2d 906, 912 (Fla. 1995); Smith v. Rainey, 747 F. Supp. 2d 1327, 1345 (M.D. Florida 2010).

11. Count III must be dismissed for failure to state a cause of action against DCF for alleged negligent training.

LEGAL STANDARD GOVERNING MOTION TO DISMISS

A Motion to Dismiss under the Florida Rules of Civil Procedure 1.140(b) cannot be granted unless the Complaint alleges no facts which, if proven, would entitle PLAINTIFF to relief. "The function of a motion to dismiss a complaint is to raise as a question of law the sufficiency of the facts alleged to state the cause(s) of action." Connolly v. Sebeco, Inc., 89 So.2d 482, 484 (Fla. 1956); Chiang v. Wildcat Groves, Inc., 703 So.2d 1083 (Fla. 2d DCA 1997).

To survive a Motion to Dismiss, a Complaint must allege a **prima facie** case. In evaluating a Motion to Dismiss, consideration is limited to the four corners of the

Complaint and acceptance of all well-pleaded allegations as true. See Alvarez v. E&A Produce Corp., 708 So.2d 997 (Fla. 3d DCA 1998); Abrams v. General Ins. Co., 460 So.2d 572 (Fla 3d DCA 1984). Whether a prima facie case has been pled depends on the sufficiency of the plaintiff's allegations of fact, excluding the bare conclusions of the plaintiff. See Frank v. Lurie, 157 So.2d 431, 433 (Fla. 2d DCA 1963).

Florida Rules of Civil Procedure 1.420(b) provides that an action may be dismissed for failure to comply with the Florida Rules of Civil Procedure. The Rules provide that a Complaint "shall contain a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Fla. R. Civ. P. 1.110(b). Specifically, Rule 1.110(b) provides:

"A pleading which sets forth a claim for relief must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled."

ARGUMENT AND MEMORANDUM OF LAW

Counts I and II against DCF should be dismissed with prejudice because placement activities are protected by sovereign immunity under the provisions of Florida Statutes § 768.28

Counts I and II of the Second Amended Complaint are in essence indistinguishable from the other. (See Exhibit A). Essentially, Counts I and II of the Second Amended Complaint alleges that DCF owed a duty to ADAMS as a Foster Child to place her in a safe environment (see Exhibit A, ¶ 14) and to supervise the placement of ADAMS with BEERS (see Exhibit A, ¶ 23). Even if PLAINTIFF's allegations were true, which they are not, DCF cannot be and is not liable for the

placement of, or placement related activities to Foster Children. Specifically, DCF's placement activities, if they occurred, are protected by sovereign immunity under the provisions of Florida Statute § 768.28, and as such, DCF is immune from liability for placement decisions and placement related activities. See B.J.M., 656 So. 2d at 912; Smith, 747 F. Supp. 2d at 1345.

Florida Statute § 768.28 provides that "In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act." See Fla. Stat. § 768.28(1) (2016). However, discretionary governmental functions for policy making, planning, or judgmental government functions are immune from tort liability. See Commercial Carrier Corp. v. Indian River County, 371 So. 2d 1010, 1020(Fla. 1979); B.J.M., 656 So. 2d at 911; Smith, 747 F. Supp. 2d at 1344; accord Department of Children and Family Services v. Chapman, 9 So. 3d 676, 683 (Fla. 2d DCA 2009). In B.J.M., the plaintiff, a minor, sued the Florida Department of Health and Rehabilitative Services (hereinafter "HRS") for negligence based upon its decision to place him in a specific residential treatment facility.¹ See B.J.M., 656 So. 2d at 908. The Court reiterated that there is no governmental tort liability for two basic categories of government action: (I) legislative, permitting, licensing, and executive Officer Functions; and (II) enforcement of laws and the protection of public safety. See Id. at 911; see also Trianon Park Condominium Association v. City of Hialeah, 468 So. 2d 912, 919 (Fla. 1985). However, if government action fell into one of the following categories: (III)

capital improvements and property control operations; or (IV) providing professional, educational, and general services for the health and welfare of the citizens, the court would need to determine what conduct constituted a discretionary planning or judgmental function and what conduct was operational. See B.J.M., 656 So. 2d at 911-12. The Supreme Court of Florida held that HRS's placement choice of a residential treatment facility was protected by sovereign immunity because it was done in part to protect the public safety. See Id. at 912. Additionally, the Court held that placement of an individual by HRS constituted a "discretionary planning or judgmental function" even if it was considered a category IV function. See Id.

The Supreme Court of Florida broadly applied the sovereign immunity of HRS for placement decisions holding that:

[14] However, as the following analysis with regard to services suggests, we believe HRS would be entitled to immunity for its discretionary placement decisions even under Trianon's category IV. As we have already noted, HRS is vested with broad discretion in exercising its placement authority. For this reason, we believe the placement function constituted a "discretionary planning or judgmental function" entitled to immunity even if considered as a category IV function.

Id. at 913 (*citing* Trianon Park Condominium Association, 468 So. 2d at 919); accord Smith, 747 F. Supp. 2d at 1345 ("To the extent, therefore, Plaintiffs contend that the DCF Defendant were **negligent in the placement** of the individual Plaintiffs, or in providing services, including medical treatment, counseling, and therapy, the DCF

¹ HRS was the forerunner of DCF. In 1996 it was reorganized into the two agencies to better serve the needs of the children and vulnerable adults of Florida. Within their spheres of statutory authority, these agencies now exercise the same discretion and provide the same services previously exercised and provided by HRS.

Defendant are **immune from liability**... pursuant to sovereign immunity")(emphasis added).

In the instant case, ADAMS was allegedly placed into the foster care of the BEERS by DCF. (See Exhibit A, ¶ 14). His placement clearly falls into category IV immunity for "the health and welfare of the citizens." See B.J.M., 656 So. 2d at 911-12. The Supreme Court of Florida's clear decision regarding the application of sovereign immunity to the placement decision in B.J.M. confers category IV discretionary action sovereign immunity on DCF under the facts and circumstances of the instant case and DCF's Motion for Dismissal should be granted as a matter of law. As such, **any placement activity** by DFC that led to ADAMS' placement with the BEERS is protected by sovereign immunity under the provisions of Florida Statutes § 768.28. See B.J.M., 656 So. 2d at 912; Smith, 747 F. Supp. 2d at 1345. Therefore, dismissal with prejudice of Counts I and II of the Second Amended Complaint against DCF is appropriate.

Count III against DCF should be dismissed because PLAINTIFF failed to state a cause of action for negligent training for which relief can be granted

Count III of the Second Amended Complaint should be dismissed with prejudice because PLAINTIFF failed to state a claim for negligent training against DCF for which relief can be granted. DCF cannot be held liable for 'mere negligence' in training Foster Parents if DCF assumed that role in this case which it did not. See Woodburn v. State of Florida Department of Children and Family Services, 854 F. Supp. 2d 1184, 1203 (S.D. Florida 2011). DCF can "only be held liable if the alleged failure to train evidenced 'a deliberate indifference' to the plaintiffs' rights." Sigler v. Bradshaw, 2015 WL 1044175 *3 (S.D. Florida March 10, 2015); See also Woodburn, 854 F. Supp. 2d at 1184. Here,

Plaintiff cannot establish a cause of action for negligent training by unsupported and conclusory statements in the Second Amended Complaint. See Sigler, 2015 WL 1044175 at *3. Instead, in order to establish deliberate indifference, PLAINTIFF must put forward some evidence that DCF was aware of the need to train the BEERS in a particular area and/or manner and deliberately failed to do so. PLAINTIFF also has to plead and establish that DCF was responsible for training Foster Parents which PLAINTIFF cannot do because training of Foster Parents is not a DCF function. See American Federation of Labor and Congress of Indus. Organizations v. City of Miami, FL, 637 F.3d 1178, 1188–89 (11th Cir. 2011) (holding in a case involving a city employees suing the city for failure to train that “To establish a municipality's ‘deliberate indifference,’ a plaintiff must put forward some evidence that the municipality was aware of the need to train or supervise its employees in a particular area...Establishing notice of a need to train or supervise is difficult); accord Woodburn, 854 F. Supp. 2d at 1203; Sigler, 2015 WL 1044175 at *3; Nichols v. Maynard, 204 Fed. Appx. 826 **2 (11th Cir. November 6, 2006 (“In order to establish deliberate indifferent, the Plaintiff must be able to allege and prove at trial that the defendant ‘(1) was objectively aware of a risk of serious harm; (2) recklessly disregarded the risk of harm; and (3) this conduct was more than merely negligent”).

In Woodburn, a former foster child who suffered from developmental disabilities sued DCF and numerous third party defendants alleging, in part, that the case management directors failed to train their employees. See Woodburn, 854 F. Supp. 2d at 1193, 1203. Without any factual support, the plaintiff alleged that the case management directors “were ‘deliberate indifferent,’ ‘acted with reckless disregard,’ and

knew that they were exposing children...to a substantial risk of serious harm.” Id. at 1203. The South District Court of Florida noted that the plaintiff’s allegations somewhat supported an inference that the case management directors “knew that unlawful action would take place and failed to stop it.” Id. However, significantly, the court found that the plaintiff failed to alleged sufficient facts supporting an inference that the case management directors were on notice or actually knew that any specific training was needed. See Id.

In Sigler, the plaintiff sued DCF for its alleged failure to properly train a former investigator. See Sigler, 2015 WL 1044175 at * 3. In support, the plaintiff alleged the following:

- The DCF fails to train their employees to be neutral, unprejudiced and unbiased....;
- The DCF specifically permitted, by their assent, customs policies or lack of training, CPI Frazier to fabricate evidence against the Plaintiff of criminal wrongdoing...;
- The DCF encourages its employees and encouraged CPI Frazier to express bias and prejudice against persons accused of wrong doing within its jurisdiction...; [and] The DCF encouraged CPI Frazier, or failed to train her to the contrary, to employ deceitful, unethical and fraudulent techniques in her investigation of the Plaintiff.

Id. at *3 – 4.

Similar to Woodburn, the Southern District Court of Florida also noted on a motion to dismiss that the plaintiff “merely alleges that DCF failed to train one specific investigator and alleged no other misconduct apart from her own situation,” and such isolated incident was insufficient to put DCF on notice of the need to train its employees in a particular manner and/or action. Id. Here, in support of Count III of the Second

Amended Complaint for negligent training, PLAINTIFF alleges the following unsupported and conclusory statements:

- Defendant, DCF, owed a duty of reasonable care in training Michael Beer and Michelle Beer as Foster Parents.
- Defendant breached said duty by failing to adequately train Michael Beer and Michelle Beer as Foster Parents which resulted in Michael Beer and/or Michelle Beer beating TRYSTEN ADAMS to death.
- Defendant, DCF, knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situation and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known the placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in his care and custody.

(See Exhibit A, ¶¶ 31 – 33).

As in Woodburn, PLAINTIFF infers that DCF knew that the BEERS would allegedly murder ADAMS and failed to stop it. See Woodburn, 854 F. Supp. 2d at 1203. However, PLAINTIFF failed to allege sufficient facts supporting an inference that DCF was on notice or actually knew that the BEERS lacked any specific training. Id. Moreover, aside from ADAMS' situation, PLAINTIFF fails to allege any other specific instances that would have placed DCF on notice of the need to train the BEERS in a particular manner. See Sigler, 2015 WL 1044175 at * 3. PLAINTIFF's isolated incident is insufficient to put DCF on notice of the need to train the BEERS if it was responsible to do so which it is not. See Id. Based on the foregoing, it is clear that PLAINTIFF fails to allege that DCF were deliberately indifferent, and as such, fails to state a cause of action. Moreover, in the instant case DCF was not responsible for the training of Foster Parents and therefore even if PLAINTIFF amended the Complaint to provide additional

information as stated above the Count would be dismissed because DCF is not responsible for Foster Parent training. Therefore, dismissal of Count III of the Second Amended Complaint is proper.

WHEREFORE, DCF respectfully request this Honorable Court grant its Motion to Dismiss PLAINTIFF's Second Amended Complaint with prejudice and any other relief this Court deems just and necessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been furnished by Electronic Mail this 30th day of September, 2016 to: **Amanda Kawecki, Esq. and Dante Weston, Esq.**, Donaldson & Weston, P.A., 311 SE Ocean Blvd., Stuart, Florida, 34994, akawecki@dwinjurylaw.com, dweston@dwinjurylaw.com; **Antony M. Iannacio, Esq.**, Bush, Gaziano, Rice & Platter, PA, 101 E. Kennedy Blvd., Suite 1700, Tampa, FL 33602, eserve@bgrplaw.com; tdomi@bgrplaw.com.

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IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN
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GERALD R. PUMPHREY, as Personal
Representative of the ESTATE OF TRYSTEN
ELI FRANK ADAMS,

CASE NO.: 2016CA001406

Plaintiff(s),

vs.

FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and DEVEREUX
COMMUNITY BASED CARE, INC.,

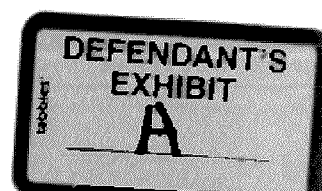
Defendant(s).

SECOND AMENDED COMPLAINT

COMES NOW, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, by and through the undersigned counsel and sues the Defendants, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (hereinafter referred to as "DCF") and DEVEREUX COMMUNITY BASED CARE, INC., and in support thereof states as follows:

PARTIES AND JURISDICTION

1. That the instant action is for money damages in excess of Fifteen Thousand Dollars (\$15,000.00) and meets the jurisdictional limits of this court.
2. That at all times material hereto, decedent, TRYSTEN ELI FRANK ADAMS, was a minor, with residence in Saint Lucie County, Florida and is otherwise sui juris.
3. That, at all times material hereto, Plaintiff, GERALD R. PUMPHREY, has been



3. That, at all times material hereto, Plaintiff, GERALD R. PUMPHREY, has been appointed and is the Personal Representative of the Estate of Trysten Eli Frank Adams, deceased. The Estate was opened in St. Lucie County, Florida. (Attached as Exhibit "A" are the Letters of Administration).

4. That at all times material hereto, the following are the survivors and beneficiaries of a recovery for the wrongful death of TRYSTEN ELI FRANK ADAMS:

- a. Elisa Benedito, decedent's mother
- b. Hoyt Adams, decedent's father

5. That at all times material hereto, Defendant, DEVEREUX COMMUNITY BASED CARE, INC., was and is a Florida Corporation, and is authorized to do business in Saint Lucie County, Florida.

6. That at all times material hereto, Defendant, DCF, was and is a state government agency.

7. That at all times material hereto, Michael Beer, was an individual, with residence in Saint Lucie County, Florida and is otherwise sui juris.

8. That at all times material hereto, Michelle Beer, was an individual, with residence in Saint Lucie County, Florida and is otherwise sui juris.

9. That at all times material hereto, all actions relevant hereto took place in Saint Lucie County, Florida.

10. That TRYSTEN ADAMS was murdered by Michael and/or Michelle Beer on September 28, 2014 while TRYSTEN ADAMS was in the care and custody of the Defendants.

11. All conditions precedent, including notice required by §768.28, Fla. Stat., have been performed or waived.

COUNT I-WRONGFUL DEATH - NEGLIGENT PLACEMENT
AGAINST DEFENDANT DCF

12. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

13. On or about July 29, 2014, Defendant, DCF, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle Beer.

14. Defendant, DCF, owed a duty of reasonable care in providing a safe environment to TRYSTEN ADAMS.

15. Defendant, DCF, breached said duty by placing TRYSTEN ADAMS in the care of Michael Beer and Michelle Beer when Michael and/or Michelle Beer beat TRYSTEN ADAMS to death.

16. Defendant, DCF knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in their care and custody.

17. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

18. As a result, Elisa Benedito, mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

19. As a result, Hoyt Adams, father of decedent, has lost present and future support and

services and has incurred pain and suffering.

WHEREFORE, Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DCF, for damages in excess of Fifteen thousand dollars \$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

COUNT II- WRONGFUL DEATH - NEGLIGENT SUPERVISION
AGAINST DEFENDANT DCF

20. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

21. On or about July 29, 2014, Defendant, DCF, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle Beer.

22. Defendant, DCF, owed a duty of reasonable care in supervising Michael Beer and Michelle beer as foster parents.

23. Defendant, DCF, further owed a duty to TRYSTEN ADAMS in supervising the placement of TRYSTEN ADAMS.

24. Defendant, DCF, breached said duty by allowing continued placement of TRYSTEN ADAMS in the care of Michael Beer and Michelle Beer which resulted in Michael Beer and/or Michelle Beer beating TRYSTEN ADAMS to death.

25. Defendant, DCF knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in his care and custody.

26. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

27. As a result, Elisa Benedito mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

28. As a result, Hoyt Adams, father of decedent, has lost present and future support and services and has incurred pain and suffering.

WHEREFORE, Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DCF, for damages in excess of Fifteen thousand dollars \$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

COUNT III-NEGLIGENCE-WRONGFUL DEATH NEGLIGENT TRAINING
AGAINST DEFENDANT DCF

29. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

30. On or about July 29, 2014, Defendant, DCF, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle Beer.

31. Defendant, DCF, owed a duty of reasonable care in training Michael Beer and Michelle beer as foster parents.

32. Defendant breached said duty by failing to adequately train Michael Beer and Michelle beer as foster parents which resulted in Michael Beer and/or Michelle Beer beating TRYSTEN ADAMS to death.

33. Defendant, DCF knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in his care and custody.

34. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

35. As a result, Elisa Benedito, mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

36. As a result, Hoyt Adams, father of decedent, has lost present and future support and services and has incurred pain and suffering.

WHEREFORE, Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DCF, for damages in excess of Fifteen thousand dollars \$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

**COUNT IV-NEGLIGENCE-WRONGFUL DEATH - NEGLIGENT PLACEMENT
AGAINST DEFENDANT DEVEREUX COMMUNITY BASED CARE**

37. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

38. On or about July 29, 2014, Defendant, DEVEREUX COMMUNITY BASED CARE, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle

Beer.

39. Defendant, DEVEREUX COMMUNITY BASED CARE, owed a duty of reasonable care in providing a safe environment to TRYSTEN ADAMS.

40. Defendant, DEVEREUX COMMUNITY BASED CARE, breached said duty by placing TRYSTEN ADAMS in the care of Michael Beer and Michelle Beer when Michael and/or Michelle Beer beat TRYSTEN ADAMS to death.

41. Defendant, DEVEREUX COMMUNITY BASED CARE knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in their care and custody.

42. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

43. As a result, Elisa Benedito, mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

44. As a result, Hoyt Adams, father of decedent, has lost present and future support and services and has incurred pain and suffering.

WHEREFORE, Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DEVEREUX COMMUNITY BASED CARE, for damages in excess of Fifteen thousand dollars

\$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

COUNT V- NEGLIGENCE-WRONGFUL DEATH NEGLIGENT SUPERVISION
AGAINST DEFENDANT DEVEREUX COMMUNITY BASED CARE

45. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

46. On or about July 29, 2014, Defendant, DEVEREUX COMMUNITY BASED CARE, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle Beer.

47. Defendant, DEVEREUX COMMUNITY BASED CARE, owed a duty of reasonable care in supervising Michael Beer and Michelle beer as foster parents.

48. Defendant, DEVEREUX COMMUNITY BASED CARE, further owed a duty to TRYSTEN ADAMS in supervising the placement of TRYSTEN ADAMS.

49. Defendant breached said duty by allowing continued placement of TRYSTEN ADAMS in the care of Michael Beer and Michelle Beer which resulted in Michael Beer and/or Michelle Beer beating TRYSTEN ADAMS to death.

50. Defendant, DEVEREUX COMMUNITY BASED CARE knew, or in the exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in his care and custody.

51. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical

expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

52. As a result, Elisa Benedito mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

53. As a result, Hoyt Adams, father of decedent, has lost present and future support and services and has incurred pain and suffering.

WHEREFORE, Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DEVEREUX COMMUNITY BASED CARE, for damages in excess of Fifteen thousand dollars \$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

COUNT VI-NEGLIGENCE-WRONGFUL DEATH NEGLIGENT TRAINING
AGAINST DEFENDANT DEVEREUX COMMUNITY BASED CARE

54. That Plaintiff re-alleges all those counts contained in paragraphs numbered 1 through 11 above as if they were fully incorporated herein.

55. On or about July 29, 2014, Defendant, DEVEREUX COMMUNITY BASED CARE, placed the decedent, TRYSTEN ADAMS, into the foster care of Michael Beer and Michelle Beer.

56. Defendant, DEVEREUX COMMUNITY BASED CARE, owed a duty of reasonable care in training Michael Beer and Michelle beer as foster parents.

57. Defendant breached said duty by failing to adequately train Michael Beer and Michelle beer as foster parents which resulted in Michael Beer and/or Michelle Beer beating TRYSTEN ADAMS to death.

58. Defendant, DEVEREUX COMMUNITY BASED CARE knew, or in the

exercise of reasonable care, should have known the risk to TRYSTEN ADAMS, and others similarly situated and failed to take reasonable steps to guard against such risk when it knew, or in the exercise of reasonable care, should have known that placement with Michael Beer and Michelle Beer created a foreseeable likelihood of harm to TRYSTEN ADAMS or other foster children placed in his care and custody.

59. As a result, the Plaintiff, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, has incurred funeral burial expenses, medical expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits.

60. As a result, Elisa Benedito, mother of decedent, has lost present and future support and services, and has incurred pain and suffering.

61. As a result, Hoyt Adams, father of decedent, has lost present and future support and services and has incurred pain and suffering.

WHEREFORE, Plaintiffs, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment against the Defendant, DEVEREUX COMMUNITY BASED CARE, for damages in excess of Fifteen thousand dollars \$15,000.00 plus costs incurred herein and any other relief as this Court deems fit and proper.

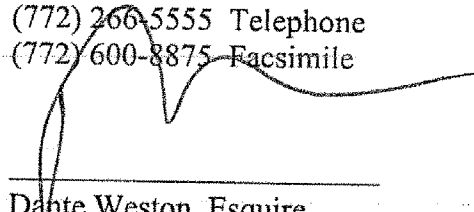
DEMAND FOR TRIAL BY JURY

WHEREFORE, Plaintiffs, GERALD R. PUMPHREY, as Personal Representative of the ESTATE OF TRYSTEN ELI FRANK ADAMS, demand judgment for damages against Defendants, DCF, and DEVEREUX COMMUNITY BASED CARE, INC., taxable costs, and trial by jury of all issues triable as a matter of right thereby.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 5th day of September, 2016 by e-service to: Anthony M. Iannacio, Esq., Bush, Gaziano, Rice & Platter, PA, 101 E. Kennedy Blvd., Suite 1700, Tampa, FL 33602, eserve@bgrplaw.com; tdomi@bgrplaw.com; Karen M. Nissen, Esq., Vernis & Bowling of Palm Beach, PA, 884 US Highway One, North Palm Beach, FL 33408, knissen@florida-law.com.

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